In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-708

PAUL J. TRAFFICANTE, DOROTHY M. CARR, COMMITTEE OF PARKMERCED RESIDENTS COMMITTED TO OPEN OCCUPANCY, an unincorporated association; THE REVEREND ARTHUR H. NEWBERG, JAMES EMBREE, ALBERT JAMES HEICK, and JAQUELINE TCHAKALIAN,
Petitioners,

vs.

METROPOLITAN LIFE INSURANCE COMPANY, a New York Corporation, and PARKMERCED CORPORATION, a California Corporation,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Brief of Respondents Metropolitan Life Insurance Company and Parkmerced Corporation in Opposition

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OPINIONS BELOW

The opinion of the District Court for the Northern District of California (Appendix A hereto) dismissing the Complaint and Complaint in Intervention is reported at 322 F.Supp. 352 (N.D. Cal. 1971). The opinion of the Court of Appeals for the Ninth Circuit (Appendix A of the Petition) affirming the Judgment of Dismissal is reported at 446 F.2d 1158 (C.A. 1971).

JURISDICTION

The Judgment of the Court of Appeals for the Ninth Circuit was entered on August 6, 1971. On September 13, 1971, the Court of Appeals denied a timely petition for rehearing *en banc*. A copy of the Order is attached hereto as Appendix B. The jurisdiction of this Court is invoked by petitioners under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Do tenants of an apartment complex, against whom no act of discrimination has been practiced and who have not been deprived of the right to lease real property, have standing under the Fair Housing Act (Title VIII of the Civil Rights Act of 1968; P.L. 90-284; 42 U.S.C. § 3601, et seq.) or 42 U.S.C. § 1982 to maintain an action against their former or present landlord for alleged acts of discrimination against others?

STATUTES INVOLVED

The statutes involved are Title VIII (Fair Housing) of the Civil Rights Act of 1968 (P.L. 90-284; 42 U.S.C. § 3601, et seq.) and 42 U.S.C. § 1982. These statutes are set forth in Appendix C hereto.

STATEMENT

This action is allegedly predicated upon the Fair Housing Act of 1968 and 42 U.S.C. § 1982. In their Complaints the petitioners, all residents of the Parkmerced apartment complex in San Francisco,[1] have charged respondents with

1. Except the Committee of Parkmerced Residents Committed to Open Occupancy. It is alleged that the Committee is an unincorporated association, all of whose members are residents of Parkmerced. The number of members of the Committee is not disclosed by the record below.

a variety of discriminatory practices against others in connection with the operation of Parkmerced but not against themselves.

At the time the original Complaint was filed Parkmerced was owned by Metropolitan Life Insurance Company ("Metropolitan"). On December 21, 1970, Metropolitan sold the buildings and leased the land constituting Parkmerced to Parkmerced Corporation in a bona fide arm's length transaction. Metropolitan has no ownership interest of any kind, direct or indirect, in Parkmerced Corporation and by reason of the sale was divested of all management rights in the complex. Since that date Parkmerced has been operated by the purchaser. Parkmerced Corporation was promptly joined as a defendant in the action. Prior to the sale Metropolitan had moved to dismiss the Complaint on the dual grounds that the petitioners lacked standing to maintain the action and that the Federal Court lacked subject matter jurisdiction.[2] At the time of the sale of Parkmerced, Metropolitan supplemented its Motion to Dismiss to assert that the action had become moot by reason of the sale. Parkmerced Corporation also moved to dismiss the Complaints.[3]

On February 10, 1971, the District Court dismissed the Complaint on the ground that the plaintiffs lacked standing

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2. This contention, which has not been abandoned, was predicated upon § 810(d) of the Fair Housing Act (42 U.S.C. § 3610(d)) which prohibits federal jurisdiction if the person aggrieved has a judicial remedy under a state or local fair housing law providing substantially equivalent rights and remedies as the Fair Housing Act. It was contended by respondent that the California Rumford Act (Cal. H. & S. Code §§ 35700, *et seq.*) and the Unruh Civil Rights Act (Cal.Civ.Code §§ 51, 52) provided such rights and remedies and that accordingly federal jurisdiction was not present.

3. In addition to the ground of standing Parkmerced Corporation asserted, and still asserts, that it, as a purchaser in no way connected with the alleged discriminatory housing practices, should not be subjected to the risk and expense of litigation for any relief which might be decreed.

to maintain the action. In so doing the Court observed that petitioners " • • • do not allege, nor can they, that they themselves have been denied any of the rights guaranteed by Title VIII or 42 U.S.C. section 1982 to purchase or rent real property" (App. A at 2). The Court of Appeals unanimously affirmed the judgment of the District Court. After a thorough examination and analysis of Title VIII and its Congressional history, the Court stated:

> "We find nothing in the Congressional discussion or debate to suggest that Congress intended to grant standing to sue to any private persons other than the direct victims of discriminatory housing practices proscribed by the Act." (App. A to Petition at 8.)

With respect to the petitioners' § 1982 claims, the Court further held:

> "We find nothing in Jones v. Mayer [392 U.S. 409 (1968)] to indicate that section 1982 would be construed to grant standing to sue to anyone other than a person who was the victim of racial discrimination in the sale or rental of property." (App. A to Petition at 9.)

Neither the District Court nor the Court of Appeals reached the jurisdictional, mootness or successor in interest questions.

ARGUMENT

The issue presented by this case is so singularly lacking in importance and significance, national or otherwise, and is so narrow and restricted it would be difficult to conceive of a case less eligible for review by this Court. The decision below has no impact whatever upon the national housing policy or any of the Civil Rights Acts but affects only the six named petitioners. A virtually identical case is now pending in the District Court in San Francisco in which the plaintiffs, whose standing to sue has not been chal-

lenged, are represented by the same attorneys representing petitioners here. The decisions of the lower courts were clearly correct and fully consistent with decisions of this Court. The litigation in which the petitioners seek to engage has not only not been authorized, expressly or impliedly, by the relevant statutes but has become moot by reason of the sale of Parkmerced.

I.

THE CASE LACKS IMPORTANCE

1. The Claims of Discrimination in This Case Will Be Judicially Reviewed in Another Action Filed by Proper Plaintiffs

The District Court dismissed this action on February 10, 1971. On February 25, 1971, petitioners' attorneys filed a Complaint entitled "Charles Burbridge [et al.] vs. Parkmerced Corporation and Metropolitan Life Insurance Company," (U.S.D.C. N.D. Cal C-71 378) a copy of which is attached hereto as Appendix D. That case is now pending, the defendants have answered, and discovery procedures are being pursued by the parties. The plaintiffs, all Negroes, allege that they are the direct victims of discriminatory housing practices which resulted in their exclusion from Parkmerced and accordingly their standing to maintain the action has not been challenged. The charging allegations of that case, which purports to be a *class action*, are virtually identical to the Complaint in this case. Accordingly the discrimination claims will be judicially examined. The pendency of *Burbridge* demonstrates not only the lack of necessity for review of this case but provides compelling evidence that neither the national housing policy nor any of the Civil Rights Acts will be subverted by denying these petitioners, against whom no act of discrimination has been practiced, standing to sue. Petitioners' contention that they are somehow the most appropriate persons to bring the action is dissolved by *Burbridge*.

2. This Case Is Meaningless in the Context of the Civil Rights Acts

As noted, this case involves six plaintiffs and a committee suing in their own right only. The case is not and does not purport to be a *class action*. None of the plaintiffs has been denied housing. A judgment in this action would be meaningless and inconclusive. It would not be binding upon persons not parties to the action who were in any way dissatisfied with the result. It was not the intention of Congress in enacting the Civil Rights Act to require private landlords to litigate their practices, procedures or social views with any tenant who happened to disagree with them. Granting petitioners standing would not only seriously detract from the detailed and efficient enforcement machinery contained in the Fair Housing Act but would unreasonably and unnecessarily expose every landlord to the possibility of vexatious suits by any tenant with an imagined grievance.

3. Denial of the Petition Will Have No Impact on Enforcement of Title VIII

The petitioners' claim to standing is of no national importance and denial of their claim will have no impact whatever upon enforcement of Title VIII. In *Jones v. Mayer*, 392 U.S. 409 (1968), this Court described the Fair Housing Act as a:

> "• • • detailed housing law, applicable to a broad range of discriminatory practices and enforceable by a complete arsenal of federal authority."

The arsenal includes well defined administrative and judicial remedies for private persons against whom acts of discrimination have been practiced and a broad range of remedial powers vested in the Attorney General. The arsenal simply does not include meaningless lawsuits by

volunteers. None of the remedies of the Act will be in any way limited, decreased, restricted or otherwise affected by denial of the petition. It is patently unnecessary to grant petitioners standing in order to vindicate any policy or statute of the United States.

4. The Case Is Moot.

The sale of Parkmerced by Metropolitan has rendered the case moot and deprived it of any arguable element of significance. There is no reasonable or foreseeable possibility of a continuance by Metropolitan of the acts complained of. While petitioners challenged Metropolitan's claim to mootness in the courts below they did concede that "a court would have difficulty in enforcing an affirmative action order against a seller who no longer controlled the rental offices or the business operations of the project * * *." It would be idle for a court to enter an injunction against a party with which it would be powerless to comply. The plaintiffs' prayer for damages cannot rescue the case from the mootness doctrine because their claim for damages is not cognizable by the relevant statutes.[4]

II.

THE DECISION BELOW WAS CLEARLY CORRECT

The decision of the Court below was rendered after a thorough examination of the Congressional history of the Fair Housing Act and full consideration of the extensive briefs filed by the parties. The decision is clearly correct.

1. The History and Language of Title VIII

The Congressional history and purpose of the Fair Housing Act are well known. The purpose is stated in a policy declaration appearing in § 3601, viz.:

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4. Infra at 10.

> "It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States."

It is clear beyond debate that the purpose of Title VIII was to make housing available to all without discrimination based upon race, color, religion or national origin. To effect this policy and purpose Congress specifically defined the acts which it declared to be unlawful with respect to renting (§ 3604) and labeled any such act as a "discriminatory housing practice" (§ 3602(f)). It thereafter provided a comprehensive scheme of remedies for any person who had been denied housing in violation of the Act. Insofar as relevant to the standing question the Act provides:

> "Sec. 3610. (a) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter 'person aggrieved') may file a complaint with the Secretary.
>
> • • • • • • •
>
> "(d) • • • the person aggrieved may • • • commence a civil action • • • against the respondent • • • to enforce the rights granted or protected by this subchapter."
>
> "Sec. 3612 (a) The rights granted by sections • • • 3604, • • • may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction."

Read in context it is clear that petitioners are not "persons aggrieved" within the meaning of § 3610(a). They simply have not been deprived of any rights granted by § 3604 which could be the subject of enforcement action under either § 3610(d) or § 3612.

2. The "Injury" Asserted by Petitioners Is Not Cognizable Under the Statutes

Petitioners ask to be accorded standing because allegedly "* * * they have suffered economic, professional, and social injuries and have been denied the right of interracial association" (Petition at 7). It is hardly worth noting that the purpose of the Fair Housing Act was not the enhancement of petitioners' economic, professional and social status and it is specious to assert that they have been denied "interracial association" by any act of respondents. Petitioners misdefine "person aggrieved" as "those *claiming injury*" (Petition at 10) and leap to an erroneous conclusion that they have standing. § 3610(a) does not define "person aggrieved" as merely anyone claiming injury but rather one who claims to have been "injured by a *discriminatory housing practice.*" Petitioners simply do not fit the statutory definition of "person aggrieved." The "injuries" they allege are not injuries contemplated or cognizable by the Fair Housing Act and accordingly they do not meet the "zone of interest" test of *Data Processing Service v. Camp*, 397 U.S. 150.

3. Administrative Agencies Cannot Confer Standing Where None Exists

(1) THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ("HUD")

The "determination" by an employee of HUD that petitioners have standing (Petition at 12) is entitled to no weight at all. This gratuitous unarticulated conclusion made only in a letter to petitioners' attorneys *while the case was pending in District Court* cannot even be deemed a semi-official declaration of the Department.[5]

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5. In *Skidmore v. Swift*, 323 U.S. 134 (1944), this Court observed that "The weight of [an administrative determination] in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which gave it power to persuade if lacking power to control."

(ii) THE DEPARTMENT OF JUSTICE

While the desire of the Department of Justice for assistance is understandable, denial of the petition will in no way detract from the assistance legitimately available to it. Respondents ask only that any action filed against them be brought and prosecuted by a proper plaintiff with a cognizable grievance in a proceeding that will terminate on a final and conclusive note. Neither the need for assistance nor the size of the Department's Civil Rights staff can confer or create standing where none exists. The "private Attorney General" concept will not be undermined in the slightest degree by a denial of standing to these petitioners.

III.

THERE IS NO CONFLICT OF DECISIONS

The decision of the court below is not inconsistent with or contrary to any of the judicial authorities cited by petitioners. In each of the cases relied upon, the plaintiff, unlike the petitioners here, was the person directly aggrieved and was the direct victim of the practice complained of. For example, in *Sullivan v. Little Hunting Park,* 396 U.S. 229 (1969), the plaintiff himself had been expelled from a corporation because he had leased his residence to a Negro; in *Barrows v. Jackson,* 346 U.S. 249 (1953), the right of the defendant to assert the doctrine of *Shelley v. Kraemer* (334 U.S. 1 (1947)) on his own behalf was upheld; in *Walker v. Pointer,* 304 F.Supp. 56 (1969), the plaintiffs themselves had been actually evicted from rented property; in *Marable v. Alabama Mental Health Board,* 297 F.Supp. 291 (1969), the plaintiffs were the direct victims of the alleged discriminatory practices; and in *Newman v. Piggie Park Enterprises,* 390 U.S. 400 (1968), *Jenkins v. United Gas Corporation,* 400 F.2d 28 (1969), *Hutchings v. United States Industries, Inc.,* 428 F.2d 303 (1970), *Miller v. Amusement*

Enterprises, Inc., 426 F.2d 534 (1970), and *Bowe v. Colgate-Palmolive Co.*, 416 F.2d 711 (1969), the plaintiff was the person against whom an act of discrimination had been directly practiced and the action was specifically authorized by an appropriate statute. Similarly, the decision here is neither contrary to nor inconsistent with the decisions in cases such as *Lee v. Nyquist*, 318 F.Supp. 710 (W.D.N.Y. 1970) aff'd ..... U.S. ..... [29 L.Ed.2d 105] (1971), *Kennedy Park Homes Association v. City of Lackawanna, N.Y.*, 436 F.2d 108 (C.A. 2 1970) *cert. denied* 401 U.S. 1010 (1971), *Scenic Hudson Preservation Conference v. FPC*, 354 F.2d 608 (C.A. 2 1965), or *Shannon v. HUD*, 436 F.2d 809 (C.A. 3 1970) affirming 305 F.Supp. 205, wherein the plaintiffs, who were the persons directly affected by governmental administrative action, were granted standing under a relevant statute to challenge governmental conduct in order to assure its regularity and compliance with pertinent laws and regulations. No such consideration is present in an action between private individuals and the basic reason for granting standing in those cases is absent here. The decisions upon which petitioners rely simply do not purport to grant standing to persons against whom no act of discrimination has been practiced.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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(Appendices Follow)